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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/853,196	05/11/2001	Richard Stanley Hajdukiewicz	7056.032	5888

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EXAMINER	
RUHL, DENNIS WILLIAM	
ART UNIT	**PAPER NUMBER**
3629	

NOTIFICATION DATE	DELIVERY MODE
01/28/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	09/853,196	HAJDUKIEWICZ ET AL.	
	Examiner	Art Unit	
	Dennis Ruhl	3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *31 October 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *31,38-41,55,61 and 65-68* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *31,38-41,55,61 and 65-68* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/31/07 has been entered.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 31,38-41,55,61,65-68 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCall et al. (6321984) in view of Alnwick (20020007318) and further in view of "Weather futures bet will give Tucson forms a hedge against loss".

For claims 31,55,61, McCall discloses a system and method for selling vehicle fuel to customers. The vehicle fuel is inherently going to be sold at a price and that price is necessarily going to be decided upon by the operator of the retail establishment that is selling the vehicle fuel, this will be explained in more detail later. McCall discloses that fuel can be sold to consumers at discounted prices by using various types of incentives and/or customer loyalty types of programs. In column 4, lines 12-23, it is disclosed that the system of McCall includes a database 40 that contains records pertaining to it's customers. It is disclosed "*For example, the store may be a member-oriented retail outlet, and a record for each customer indicates that the customer is a*

member and a "level" of benefits or privileges that the customer may receive. One level may indicate a first discount to the customer of the goods he purchases while another level may indicate a second discount." The database 40 stores the information regarding the type of discount that the customer is entitled to. Example C discloses a situation where a customer is entitled to certain benefits that result in a 10 cents per gallon discount. McCall also discloses that a discount can be given for fuel based on the whether or not the customer has purchased items for a pre-selected group, exceeds a certain threshold (quantity or dollar amount), made purchases on certain dates, etc.. McCall recognizes that there may be more than one type of action that would trigger a discount and that there can be differing levels of discounts given to a given customer. A given customer may be entitled to more than one discount at the same time for differing criteria being met. The claimed receiving of "program sponsor data that includes an amount of a "finder's fee" paid by a program sponsor" is considered to be the discount amount that the customer is entitled to for the some various programs discussed by McCall. This data is received from the database 40, which satisfies the claimed "querying" step added to the claim. The discount amount that the customer is entitled to is considered to be the claimed fee amount. With respect to the language about the fee being paid by a program sponsor, applicant is referred to column 12, lines 19-30, where it is disclosed that "*Pertaining to the discounts, a variety of arrangements are contemplated. Some examples entail the funding of the discount or reward by third parties other than the supplier of petroleum".* If a third party is funding the discount, this has been decided in advance, and the fee that they pay can very reasonably be

considered a "finder's fee". The discounted amount is paid to the program operator by the program sponsor (the third party) to more or less subsidize the discount that is given to the customer. The claimed step of receiving program sponsor data is the receipt of the information relating to the discounts given to customers and the amounts of those discounts paid by a program sponsor (the third part discussed in column 12).

Not disclosed is receiving customer usage data that includes a negotiated quantity of fuel to be purchased over a number of months that a discounted price will be given to the customer and the act of using the usage data along with the program sponsor data (subsidized discount given to customers) to determine a program price for fuel. McCall also does not disclose using the usage data and sponsor fee amount (data related to a fee to be paid by a third party) to develop a financial hedging strategy that can diminish the risk associated with the volatility of fuel prices.

With respect to having and receiving "usage data" that includes a negotiated quantity of fuel to be purchased over a given number of months, Alnwick discloses a system for purchasing products. Alnwick discloses that customers may receive certain types of discounts. In paragraph 72, it is disclosed that a customer may receive a discount if the customer has "*maintained a negotiated minimum sales volume over a negotiated period of time*". This is another type of customer discount that is known in the art and is evidenced by Alnwick. It is well known in the area of product discounts to provide discounts based on negotiated purchase volumes, this itself is nothing new. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide McCall with the feature of providing customers with a fuel discount

when they negotiate a minimum volume of fuel (any of the known types) to be purchased over a given period of time, as is known in the art and as is disclosed by Alnwick. This satisfies the claimed "usage data". One of ordinary skill in the art would find it obvious to try adding a negotiated volume discount to the system of McCall in an effort to further attract customers. McCall discloses in column 2, lines 58-end, that information relating to fuel discounts is used by the retailer *to develop new marketing strategies*. The retailer is disclosed as needing to know if a given incentive program is working or not in order to determine if that program should continue, *or if the purchase criteria should be changed* to attract a larger number of customers. McCall recognizes that one of ordinary skill in the art is going to try different programs and approaches and will try out differing purchase criteria to more or less fine tune the program to be as successful as it can be. One of ordinary skill in the art of marketing and incentive programs is a person with some level of creativity on their own. McCall Column 10, lines 1-7 also discloses the fact that the retailer is going to analyze the data relating to the discounts so as to *adjust the program specifics as needed*. One of ordinary skill in the art would find it obvious to provide a negotiated volume discount program to the overall incentive program of McCall in an effort to further attract customers and have a successful customer discount incentive program.

With respect to the claimed use of the "program sponsor data" and "usage data" to determine the program price for fuel, this is considered to be obvious for the following reasons. To start with, any owner that sells fuel as McCall does, and that is looking at negotiated volume sales, is going to try to figure out as best they can, what the quantity

of fuel is that the customers will purchase, as well as how much money is coming in from the third part that is paying the "finders fee". One of ordinary skill in the art that is offering negotiated prices to customers is obviously going to take into account how much fuel the customers want. This necessarily affects how much fuel the retailer is going to have to commit to, which is a huge financial responsibility. A retailer may obtain a bigger discount from their fuel provider if the overall amount of fuel to be purchased is greater and they need to ensure they do not buy too much fuel that exceeds the total negotiated amount. The retailer must have some idea of the quantity of fuel that their customers are negotiating to buy before the price can be set, because the price you agree to sell the fuel at is directly related to and dependent on the price that the retailer has to pay to obtain the negotiated quantity of fuel. This is basic economics. This is also seen as the measuring of the demand for the discounted fuel (negotiated amount), and then using that demand information to calculate the fuel program price. It would have been obvious to one of ordinary skill in the art at the time the invention was made to take into account the quantity of fuel that the customer is negotiating to purchase over the given amount of time (months) along with the program sponsor data (which is like income to the retailer because the retailer is not paying for the discounts because they are paid by the third party) to calculate the program price for the fuel that is being negotiated. The claimed data that applicant is using to figure out the program price is the kind of data that one of ordinary skill in the art would be naturally concerned with. How much fuel you are committing to provide to customers, the time period over which this is to occur, and any other income that will offset the

effective purchase price of the fuel (such as the third party paid discount amount) are all things that one of ordinary skill in the art would naturally want to take into account when determining the program price for fuel. Once the program price is determined, one of ordinary skill in the art would have found it obvious to store the number. This is desirable because this price is the agreed upon price that you are selling fuel to the customer at, where the customer has negotiated a certain volume of purchases, so you would clearly want to have a record of what that agreed upon price is. That is considered to be obvious.

McCall does not disclose using the usage data and sponsor fee amount (data related to a fee to be paid by a third party) to develop a financial hedging strategy that can diminish the risk associated with the volatility of fuel prices. The "Weather futures" article discloses the well-known concept of looking to the future to help protect against unnecessary losses due to factors that could be predicted to some extent. The article discloses that a natural gas company can "hedge" itself against lost revenues if a warm winter cuts sales. A hedging strategy for fuel is very old and well known, for example the futures market for oil, which helps reduce the risk due to changing fuel prices and market changes. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the usage data and the program sponsor "finder fee", as well as any other data deemed as necessary or relevant data, to develop a financial hedging strategy to help prevent foreseeable losses due to changing demand and fuel prices. In the fuel market, any kind of extreme weather changes, or changes due to OPEC, impact the prices in the fuel markets. Developing a strategy that can

predict upcoming conditions in the market so that you don't offer too low of fuel prices for the incentive program can protect against losses when the price for fuel goes up considerably and you are taking losses due to too liberal of an incentive program.

With respect to the preamble that recites "A processor enabled method", this has been considered by the examiner but is not defining anything further to the method recited in the body of the claim. A prior art processor is capable of doing this method if it is programmed to do so. Nothing in the body of the claim requires any processor of any kind, so this language really means nothing to the rest of the claim, other than the method is able to be done by a processor. Even the storing step can be just a notation on paper, like a contract for the negotiated price.

For claim 55, in addition to that immediately above, the step of "determining a market indicator relevant to the future price" is what you do when you are developing a financial hedging strategy involving the sale of fuel. You are inherently looking to market indicators that are relevant to the future price for the fuel.

For claims 38,65, not disclosed is that multiple prices are calculated for multiple geographic regions. Because many gas stations are franchises that are located over many geographical areas, and in view of the very well known fact that gas prices vary by geographic region (California prices are higher than Virginia prices), it would have been obvious to one of ordinary skill in the art at the time the invention was made for a franchise owner (fuel provider) to calculate program prices for multiple geographic regions as claimed. If the retailer has a chain of stores that are location in different

geographical locations, it would have been obvious to have different program prices because the price of the vehicle fuel is not going to be the same for all of the regions.

With respect to claims 39,66, not disclosed is that the hedging strategy includes purchasing futures for fuel. The idea of purchasing "futures" in the fuel market is notoriously old and well known, and official notice is taken. This is a way to try to predict what the market price for fuel is going to be in the future, hence the name "futures". It would have been very obvious to one of ordinary skill in the art at the time the invention was made to have the hedging strategy include "futures" purchases as is well known in the art as a way to protect one from predicted rising prices for fuel.

With respect to claims 40,67, the resulting program price is going to be a price that is discounted when compared to a current price. That is what is meant by offering a discounted price, a price less than normal. Providing a negotiated and discounted program price for fuel as is set forth in the rejection is resulting in a percentage discount to a current price. Any discounted price is some percentage lower than the current price. This fact is inherent to any two different prices, one price is a certain percentage lower than the other price.

With respect to claims 41,68, a capped price is still just a price. The program price of the prior art rejection is a capped price because that is the agreed upon price that a given quantity of fuel is to be sold at. This satisfies what is claimed.

4. Applicant's arguments filed 10/31/07 have been fully considered but they are not persuasive.

With respect to applicant's allegation that the office action and the rejection is not clear because the examiner has not addressed all of the claimed elements with sufficient clarity and that applicant is not sure what arguments apply to what limitations, the office action and the statement of rejection is addressing all of the claimed elements and is more than sufficiently clear so as to enable a reader to understand the position of the examiner. There is more than sufficient clarity in the office action to allow one to determine the position of the examiner.

Applicant has argued that none of the references address the calculation of a guaranteed program price for fuel for a type of fuel, using customer usage data and the program sponsor data for a quantity of fuel to be purchased over a number of months. Applicant has stated that they do not see where this has been addressed. The rejection clearly addresses these limitations. The examiner has stated "*Not disclosed is receiving customer usage data that includes a negotiated quantity of fuel to be purchased over a number of months that a discounted price will be given to the customer and the act of using the usage data along with the program sponsor data (subsidized discount given to customers) to determine a program price for fuel. McCall also does not disclose using the usage data and sponsor fee amount (data related to a fee to be paid by a third party) to develop a financial hedging strategy that can diminish the risk associated with the volatility of fuel prices.*" The examiner then discussed the secondary references in detail and how they render the above limitations obvious. The examiner does not know how to respond to applicant's statement other than to state that the rejection clearly

addresses these limitations and the secondary references have been relied upon to show that they are obvious. This argument is not persuasive.

Applicant has argued that the prior art does not disclose that a database is queried for the program sponsor data. In column 4, lines 12-23, it is disclosed that the system of McCall includes a database 40 that contains records pertaining to it's customers. It is disclosed "*For example, the store may be a member-oriented retail outlet, and a record for each customer indicates that the customer is a member and a "level" of benefits or privileges that the customer may receive. One level may indicate a first discount to the customer of the goods he purchases while another level may indicate a second discount.*" The database 40 stores the information regarding the type of discount that the customer is entitled to. The claimed receiving of "program sponsor data that includes an amount of a "finder's fee" paid by a program sponsor" is considered to be the discount amount that the customer is entitled to for the some various programs discussed by McCall. This data is received from the database 40, which satisfies the claimed "querying" step added to the claim. The discount amount that the customer is entitled to is considered to be the claimed fee amount. The argument is not persuasive.

Applicant has alleged that the prior art references are not admitted to be prior art but no explanation has been provided as to why not. Applicant must provide some reasoning for the examiner to consider; otherwise, this is just a general allegation with no supporting explanation for the examiner to consider. This argument is not persuasive.

Applicant has alleged that there is not reason, rationale, or motivation for the combination as set forth by the examiner but has not provided an explanation as to why this conclusion is believed in. This argument is not persuasive. Applicant must provide some reasoning for the examiner to consider; otherwise, this is just a general allegation with no supporting explanation for the examiner to consider.

With respect to the arguments that there are other reasons the claims should be allowed, but that applicant is choosing to not present those arguments to the examiner, applicant is reminded of 37 CFR 1.111, which requires that applicant point out "the supposed errors" in rejections and objections of an office action. Applicant has stated that "*Applicant asserts that all such remaining and not discussed claim elements, all, also are distinguished over the prior art and reserves the opportunity to more particularly remark and distinguish such remaining claim elements at a later time should it become necessary*.". Applicant's failure to present these additional reasons for patentability is taken as applicant's acquiescence as to the merits on these other claimed elements. In the interest of expedited prosecution if applicant feels there are other reasons that the claims are deemed to be allowable, those reasons should be set forth for the examiner to consider.

5. This is a n RCE of applicant's earlier Application No. 09/853,196 All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL**

even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is 571-272-6808. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dennis Ruhl/

Primary Examiner, Art Unit 3629